IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10065 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIOM ALLOYES

Versus

SHITLAPRASAD PRATIRAJ

Appearance:

1. Special Civil Application No. 10065 of 1995

MR KV GADHIA for Petitioner No. 1

MR AG VYAS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 23/08/2004

ORAL JUDGEMENT

Heard learned advocate Mr.K.V.Gadhia on behalf of the petitioner. Learned advocate Mr.A.G.Vyas appears for respondent.

1. In the present petition, the petitioner - M/s Hariom Alloys, Ahmedabad has challenged the award passed by the Labour Court, Ahmedabad in Reference No.2311 of 1986 dated 9th March, 1995 below Exh.24 [Annexure-G at page.37] whereby the the labour court has rejected the reference of all the workmen except the present respondent Shri Shitalaprasad Pratiraj. The labour court has granted reinstatement to the workman Shri Shitlaprasad Pratiraj with continuity of service with full backwages of the interim period. The labour court has also awarded the cost of Rs.500/-. This Court [Coram : M.R.Calla, J.] has passed the following order on 24th January, 1996.

"Mr.K.V.Gadhia, learned counsel for the petitioner. Mr.R.C.Pathak, who had appeared on behalf of the respondent, has pleaded no instructions and has submitted that his name may be deleted, nor the respondent has appeared despite service.

Mr.Gadhia has pointed out from the award that the findings suffer from inconsistency inasmuch as the finding has been given that the workman was not working in the concerned Company and there was no relationship of employer and employee and yet the reinstatement with full backwages has been granted.

Rule returnable by 6.3.96. In the meanwhile the operation of the impugned award dated 9.3.95 read with the order passed in Review dated 8.9.95 shall remain stayed."

2. Learned advocate Mr.Gadhia submitted that the labour court has rejected the claim of other six workmen on the ground that these six workmen were not able to prove before the labour court that they were employees of the petitioner establishment. Therefore, on the same line, the case of the respondent workman was also not proved before the labour court that he was employed by the petitioner establishment. Mr.Gadhia has also submitted that after completion of arguments in the matter, the workman Shitlaprasad Pratiraj had produced one document card which was objected by the Advocate for the petitioner, even though, without proving the said document "identity card", the labour court has taken into

account as admitted document or proved document and passed the award against the petitioner. He further submitted that merely production of identity card after completion of oral arguments from both the sides, not proved working days of the workman. At the most, identity card establishes relationship as employer and employee. But the aspect whether termination order is legal or not, has not been examined by the labour court. It is also submitted that on behalf of the petitioner, one witness Jitendra Mulajibhai Gandhi who was partner, was examined vide Exh.20 who produced all the relevant records and documents viz. muster roll, pay register of different period which was examined by the Factory Inspector. This witness was cross examined by the Advocate for the workmen. However, in none of the document, name of any workman including said Shitlaprasad Pratiraj was found on record. Therefore, learned advocate Mr.Gadhia submitted that award passed by the labour court is erroneous and amounts to non application of mind inasmuch as the labour court has not given any reasoning in support of its conclusion and on that ground that on what ground termination order has been set aside. Why identity card has been taken on record when it was objected by the learned advocate for the petitioner. As such, no reason has been given by the labour court and therefoer, the labour court has committed gross error and award in question requires to be set aside.

3. No affidavit-in-reply is filed by the respondent workman before this Court.

4. I have considered submissions made by the learned advocates for the parties. It is contended by the learned advocate Mr.Gadhia that after completion of arguments, identity card which was produced by the workman, was objected by the Advocate for the petitioner but despite this, the same was taken on record as proved document by the labour court. Therefore, in my opinion, the labour court has committed basic apparent error on the face of the record. It is duty of the labour court not to accept said document after completion of arguments. If such document is taken on record, then consent of the other was very well required for consideration of such document. But in the instant case, though the other side had not given any consent and on the contrary, objection was taken by the Advocate for the petitioner. It further came on record that the witness of the petitioner Mr.Gandhi has produced the muster roll for the period from January 1985 to January, 1987, pay registers for the period from December, 1983 to August, 1984, September, 1985 to October, 1987 and settlement

dated 28th August, 1985. That said record was examined and inspected by the Factory Inspector at the time of inspection and visits of the establishment of the petitioner in February, 1985, March, 1985, December, 1985 and on 5th November, 1985 and 8th August, 1986. It is clear finding of the labour court that in none of the documents viz. muster roll and pay register produced by the petitioner, the name of the concerned workmen were not found from record. The workmen concerned were not able to produce any documentary evidence to establish relationship as employer and employee. Except Mr.Shitalaprasad Pratiraj, no other workman has produced any document. Therefore, on the basis of these facts, the labour court has rightly come to the conclusion that there was no relationship between the parties as employer and employee. But the error committed by the labour court is, for considering the identity car which was produced by the workman vide Exh.23, wherein the labour court has allowed only production by order dated 29th December, 1994. However, in the said application, an endorsement made by the Advocate for the petitioner to the effect that this matter was finally heard by the labour court prior to one year and therefore, now production of identity card by such application is objected. Thereafter, the labour court has not passed any further order upon said application Exh.23 permitting the said document in question 'Identity Card' and exhibition of the same. Merely allowing production of the document, the same cannot be exhibited and unless and until the document is exhibited, the labour court should not have taken into consideration the said document as proved document. Therefore, considering the entire facts emerging on record and on perusal of the award, in my opinion, the labour court has committed gross error in relying upon the identity card which was produced at Exh.23 though not proved document and exhibited and relied upon the said document and the labour court has granted relief on the basis of the said document. The labour court has not considered further aspect that relationship is established then whether workmen had remained continued in service for more than one year or not and Section 25-F of the I.D.Act has been violated or not. No such question has been examined by the labour court and straightaway relying on identity card, continued service and violation of Section 25-F of the I.D.Act has been presumed by the labour court without any evidence and therefore, such finding is baseless and perverse. Therefore, the labour court has committed gross error which found apparently on the face of record and hence, contentions raised by the learned advocate Mr.Gadhia required to be accepted while negativing

contentions of the respondent workman raised before the Labour Court. Therefore, award in question requires to be quashed and set aside.

5. In the result, present petition is allowed. Award in question passed by the labour court concerned in Reference No.2311 of 1986 dated 9th March, 1995 is hereby quashed and set aside. Rule is made absolute to the extent indicate above. No order as to costs.

Date : 23.8.2004 [H.K.Rathod, J.]

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